



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,899	08/07/2003	Aidan Petrie	07298.0075.NPUS01	7813
68768 7590 12/01/2009 NOVAK DRUCE AND QUIGG, LLP (Thule) 1000 LOUISIANA STREET FIFTY-THIRD FLOOR HOUSTON, TX 77002				
EXAMINER				
ROWAN, KURT C				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
12/01/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/635,899

Applicant(s)

PETRIE ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 11-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/19/2009 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9, 11-12, 14, 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Washington (4523704)

6. The patent to Washington shows a carrier box for holding fishing rods and reels that is configured to be mounted to carrying vehicle. Washington shows a carrier box 10 having a lid portion 22 and a base portion 24. Both the lid portion and the base portion have edge portions as shown in Fig. 1, complementary to each other. Washington shows access apertures 26, 28, formed between the edge portions of the lid portion and the base portion when the carrier box is in a closed configuration. Washington shows an interior of the carrier box configured to receive and support a

fishing rod and reel. The carrier box is configured to be substantially weather-tight in the closed configuration. The patent to Washington shows an access aperture 44 through the carrier box from a front end to a rear end that is configured to permit a portion of the fishing rod to project outside the carrier box when in the closed configuration as shown in Fig. 2. Washington shows a clamping arrangement 42 configured to releasably fasten upon a vehicular carrier rack. Washington shows a pliable buffer 50, 51 arranged within an interior of the access aperture 26, 28 since the interior of the access aperture can be considered to be the interior of the carrier box. Washington shows the buffer arranged to form-fit about a portion of the fishing rod 12, 18 that is positioned in the carrier box. Washington show from the drawing that the material that forms the pliable buffer to be some type of foam material which can be considered to form a weather resistant barrier between the exterior and interior of the carrier box in the closed configuration when a fishing rod is installed therein as shown in Fig. 2. In reference to claims 11 and 18, Washington shows an anchor arrangement 40 for securing the distal end of a fishing rod. Since the anchor arrangement secures the carrier, it also secures the fishing rod and, hence, the distal end of the fishing rod. The suction cups are at a distance from away from the carrier box. In reference to claim 12, Washington shows a portion of the carrier box such as the bottom is adapted to form a stand to act as a free standing storage arrangement. In reference to claim 14, Washington shows the carrier box tapers towards a forward end for aerodynamic purpose as shown in Fig. 3. In reference to claim 17, Washington shows a plurality of access openings 44.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Washington (US 4523704) as applied to claim 1 above, and further in view of Michal (US 3662933).

The patent to Washington shows a fishing rod and reel holder as discussed above. Washington shows the base portion and the lid portion being hinged 34 as shown in Fig. 1 for pivotal movement between the base and the lid noting Figs. 1-2. The patent to Michal shows a fishing rod and reel carrier. Michal shows a seal arrangement 45, 46 between mating lip portions of the lid 48 and base portions 20. In reference to claim 13, it would have been obvious to provide Washington with a seal arrangement as shown by Michal for the purpose of protecting the lip from wear. In reference to claim 21, Washington shows all of the elements recited noting claim 9, above, with the exception of the anchor arrangement separate from the carrier box and attached to a vehicular rack a distance away from the carrier box. Michal shows a carrier box 46, 47 for fishing rods mounted on a roof rack 32, 32. Michal shows an anchor arrangement 36 separate from the carrier box and attached to the vehicular rack 32 at a distance away

from the carrier box for securing a distal end of a fishing rod 22 installed in the carrier box 46, 47. The anchor arrangement is considered to be separate from the carrier box since it is separately moveable from the carrier box and the roof rack noting column 1, lines 51-58, which state that the bolts 24 pass through the cross bar 32 and alongside and under carrier's exterior. This is taken to be a distance away from the carrier box. At any rate, it would have been obvious to provide Washington with an anchor arrangement and roof rack as shown by Michal to hold the rods and the carrier box to the roof of an automobile.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Washington as applied to claim 9 above, and further in view of Zielinski (US 5678348). The patent to Washington shows a fishing rod and reel carrier arrangement as discussed above and shows a plurality of access apertures 44. Washington does not show a pliable buffer arranged in the interior of the access aperture. The patent to Zielinski shows a fishing rod and reel carrier arrangement having a plurality of apertures 20, 22, 24, 26 having a pliable buffer 60 arranged within the interior as shown in Fig. 2. In reference to claim 15, it would have been obvious to provide Washington with a pliable buffer as shown by Zielinski for the purpose of protecting the fishing rods. See KSR Int'l. v. Teleflex Inc. 82 USPQ2d 1385 (US 2007) which states that simple substitution of one known element for another to yield predictable results would have been obvious. In this case the results would have been entirely predictable.

5. Claims 16, 19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Washington (US 4523704).
6. The patent to Washington shows a fishing rod and reel carrier as discussed above. In reference to claim 16, Washington does not show drainage holes in the bottom of the base portion. However, it would have been obvious to provide Washington with drainage holes to let water out of the carrier. The examiner takes Official Notice that drainage holes in fishing tackle carriers is old and well known in the art. In reference to claim 19, Washington shows the access apertures 44 as having a round shape, but it would have been obvious employ a rectangular shape since the function is the same and no showing of unexpected results was made. See *In re Dailey et al.*, 149 USPQ 47. In reference to claim 20, Washington shows one rod per access aperture, but it would have been obvious to secure more than one rod depending on the size of the rods and the size of the aperture for multiplied effect. See *In re Harza*, 124 USPQ 378 which states that duplication of parts for multiplied effect is obvious.

Response to Arguments

7. Applicant's arguments filed 3/25/2009 and 11/19/2009 have been fully considered but they are not persuasive. Applicant's arguments in regard to the rejection of claim 11 under 35 USC 102 have been considered and addressed in the above rejection. Also, it should be pointed out that Washington shows a pliable buffer 50, 51 arranged within an interior of the access aperture noting how the access aperture is defined. As to the cushion of Washington not extending into the apertures, Fig. 1 shows cushion 51 extending into the apertures 26 in the lid portion. Applicant argues that

element 51 in Washington is not defined in the specification, but it is clearly shown in Fig. 1. Element 51 is taken as the complementary pliable buffer to buffer 50 in the base portion of the carrier box, while buffer is mounted in the lid portion of the carrier box. In regard to claim 11, it should be pointed out that the suction cups 40 of Washington parallel to a front surface of the carrier box is at a distance away from the carrier box to the vehicular carrier rack. Claim 21 in contrast to claim 11, recites that the anchor arrangement is separate from the carrier box. In regard to claim 13, it should be pointed out that the limitations of claim 13 are not exactly the same as those recited in canceled claim 10 since claim 13 recites the mating lip portions and claim 10 (now part of claim 9) does not. Hence, the grounds of rejection are different. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In response to applicant's argument that Zielinski is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art reference to Zielinski is not

only found in the same subclass as Washington, but it is also reasonably pertinent to the particular problem with which applicant was concerned, namely holding a plurality of fishing rods in an array for transportation. In response to applicant's argument that Washington and Zielinski are two systems completely different from one another, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Clearly the claims of the present invention should be amended to overcome the prior art rejections. In reference to claim 14, applicant argues that Washington does not disclose that the carrier box tapers is disclosed or suggested in the reference, but this is not correct since Washington shows in Fig. 3 that the carrier box, when mounted to a car tapers toward the front since the middle portion of the carrier box is higher from the roof of the car than the leading edge of the carrier box. This is a taper. In regard to claim 13, applicant argues that Michal does not disclose or suggest a seal arrangement. However, Fig. 2 of Michal shows a fitted lid 48 with a seal being made between the foam rubber 46 on the fitted lid and foam rubber 46 of the enlarged reel receiving portion 45. In reference to claim 15, Zielinski is not cited to show a carrier box. Washington is cited to show a carrier box. Both Washington and Zielinski show fishing rod carriers and therefore are analogous art and combinable. In the rejection of claim 15, the examiner provides articulated reasoning with rational underpinnings for the

proposed combination. In regard to claim 20, one skilled in the art would have found it obvious to change the size of the openings in the carrier box to carry different sized rods and reels since routine experimentation would be used to determine optimum openings and that one skilled in the art would have the knowledge to stagger the rods and reels to more efficiently use the space of the carrier. Applicant states that the four fixed apertures of Washington would make it difficult if not impossible to transport rods with variations of size, but no evidence has been submitted to support this allegation. Further see Washington in Fig. 4, which shows the carrier transporting rods of different sizes. In reference to claim 21, applicant argues that the wing nuts 36 is not separate from the carrier box and is attached to the carrier box. Since the wing nuts 36 secure the carrier box, they secure the fishing rod and therefore the distal end of the fishing rod.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR
/Kurt Rowan/
Primary Examiner, Art Unit 3643